



U.S. Department of Justice

Immigration and Naturalization Service

DD

Public Copy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED] Office: Philadelphia

Date: JAN 24 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: Self-represented

Identifying data related to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly
Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on December 13, 1956 in Warsaw, Poland. The applicant's father, [REDACTED] was born in Poland in 1926 and acquired U.S. citizenship at birth through his father (the applicant's grandfather). The applicant's mother, [REDACTED], was born in 1930 in Poland and never had a claim to United States citizenship. The applicant's parents married each other on April 13, 1951. The applicant claims that he acquired United States citizenship under § 301(g) of the Immigration and Nationality Act, 8 U.S.C. 1401(g).

The district director determined the record failed to establish that the applicant's United States citizen parent had been physically present in the United States or one of its outlying possessions for 10 years, at least 5 of which were after age 14, as required under § 301(g) of the Act at the time of the applicant's birth.

On appeal, the applicant disagreed with the decision and argued that his father was unaware of the residence requirement and did not begin residing in the United States until 1996 due to the conditions in Poland.

Section 301(g) of the Act provides, in pertinent part, that a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

The record establishes that the applicant's father did not begin residing in the United States until December 7, 1996. The applicant's father never resided nor was ever physically present in the United States prior to the applicant's birth.

The applicant has not shown that he acquired United States citizenship at birth because he has failed to establish that his father was physically present in the United States for the required period prior to the applicant's birth. The parent's physical presence requirement cannot be waived. Only the physical presence requirements regarding the former "retention requirements" imposed on a child could be waived in certain circumstances. The issue at hand does not involve the former retention requirements.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.

The applicant has not met this burden of establishing that his father had been physically present in the United States a total of 10 years, 5 of which were after the age 14. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.